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News Release

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Judgement helps protect wetlands from pollution

MINNEAPOLIS— A recent federal court order is now another tool in the legal arsenal to protect wetlands from pollution. On Sept. 25, United States District Court Judge Patrick J. Schiltz entered an injunction requiring a Minnesota man to restore a parcel of wetland to its original condition.

“The Court orders (Gary) Bailey to restore the wetland that he unlawfully polluted almost a decade ago,” Schiltz wrote in his 40-page order.

According to court documents, Gary Bailey constructed a road in a wetland located in Lake of the Woods County, Minn., in 1998 without obtaining a permit. The United States believed this was a violation of the Clean Water Act, the federal law aimed at protecting our nation's waters.

Bailey owns a 13-acre site in the county, and planned to plat it for residential development and sell lakeside lots. In the spring of 1998, he hired a company to construct an access road through the site, and in May of 1998, the company cleared a 66-foot wide roadway that ran approximately a quarter of a mile long. The company also dug a ditch on each side of the roadway and installed two culverts beneath the northern and southern ends of the road. The road was covered with about 2,000 square yards of gravel.

Officials from the local Soil and Water Conservation District, the county, the Environmental Protection Agency and the U.S. Army Corps of Engineers informed Bailey that the roadway was not authorized and that construction should stop until the proper permits were granted. Despite those warnings, work continued on the roadway until it was completed on Sept. 17, 1998.

Bailey attempted to file an after-the-fact permit, which was rejected. In October of 2001, the Corps ordered Bailey to restore the land to its pre-violation condition. Bailey refused to comply, and the government filed legal action in 2005 to enforce it.

Bailey counterclaimed arguing that the Corps did not have jurisdiction over the site. He also brought in the county as a third-party defendant, alleging that the county should have to pay to restore the wetland because it had control of the roadway.

The court ruled that the county did not have control, and stated that Bailey's interaction with the county focused on getting the land platted and getting the county to take over responsibility for maintaining the road. Schiltz wrote none of this makes the county responsible for Bailey's violations.

"The problem with Bailey's claim against the county is that Bailey has identified no cognizable legal theory under which he has a right of indemnity or contribution against the county," Schiltz wrote.

During the hearing, Bailey disputed whether the U.S. offered sufficient evidence that the wetland extends to Lake of the Woods, and challenged the Corps's definition of a wetland. The court rejected Bailey's challenge.

"He chose to defy the law by starting construction on the road without a permit, and then he chose to defy the law again by resuming work after the Corps told him to stop," Schiltz wrote.

Bailey argued that the Corps unconstitutionally invaded an area of authority reserved to the states. He also argued that the Corps violated the Equal Protection Clause by administering its regulations in a disparate manner.

The court disagreed with Bailey, and ruled that the Corps does have jurisdiction over the site under the Clean Water Act.

"Americans care for the environment, and this judgement is a reminder that the federal government will enforce the Clean Water Act," said U.S. Attorney Rachel K. Paulose, whose office represented the interests of the United States in this matter.